

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Ross Lay

v.

Case No. 05-cv-131-PB

USA et al.

ORDER

Re: Document No. 7, Motion to Dismiss

Ruling: Plaintiff's claims are troubling, if true, because they stem from negligent misstatements by a government official. Nevertheless, the government correctly points out that the United States has not waived its sovereign immunity for claims "arising out of . . . misrepresentation or deceit." 28 U.S.C. § 2680. Because these claims unquestionably arise from alleged misrepresentations, I have no choice but to grant the government's motion to dismiss for lack of subject matter jurisdiction. In doing so, I have considered and rejected plaintiff's argument that his claims arise from a negligent failure to follow internal procedures. The harm at issue could not have occurred but for the communication of incorrect information. The claims thus are encompassed by the misrepresentation exception. See Muinz-Rivera v. United States, 326 F.3d 8, 13-14 (1st Cir. 2003).

/s/ Paul Barbadoro
Paul Barbadoro
District Judge

Date: October 3, 2005

cc: Gretchen Witt, Esq.
George T. Campbell, III, Esq.
David P. Slawsky, Esq.